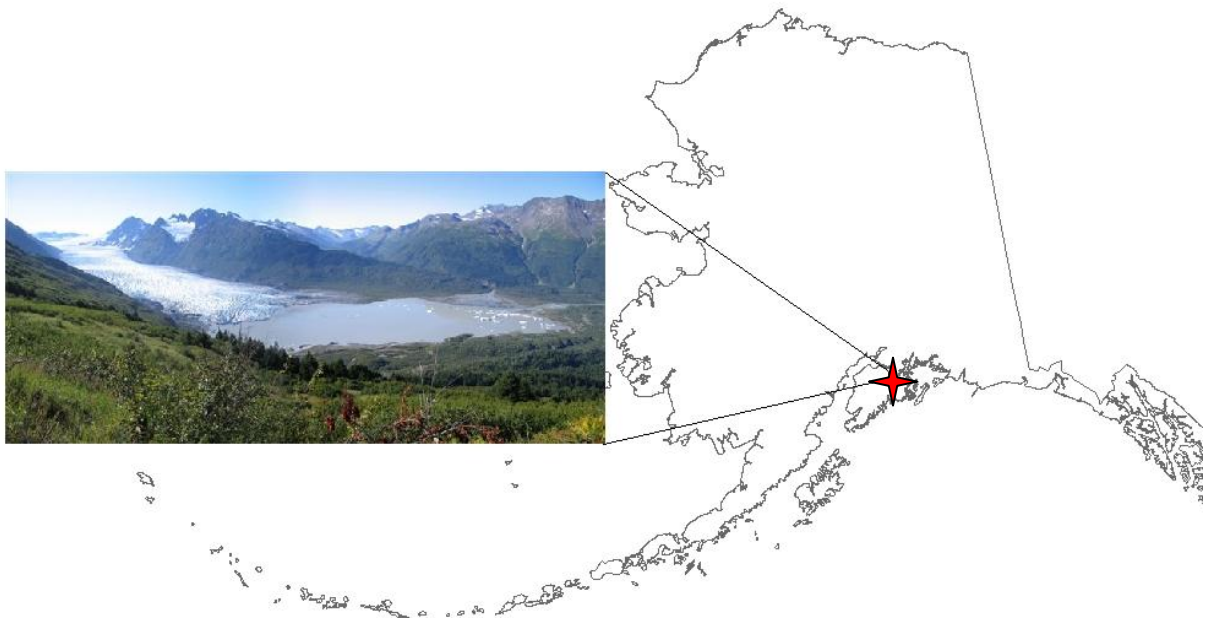




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Anchorage Field Office
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(907) 267-1246
<http://www.blm.gov/ak/st/en/fo/ado.html>

FINDING OF NO SIGNIFICANT IMPACT

Applicant/ Lead Agency: U.S. Forest Service
Cooperator: Bureau of Land Management
Title: Spencer Glacier Withdrawal Application
BLM Serial Number: AA-086850
BLM Environmental
Document Number: AK-010-08-EA-044



Location: Chugach National Forest
Kenai Peninsula, Alaska

Prepared by: Bureau of Land Management
Anchorage District Office
April, 2009

PROPOSAL AND APPLICATION FOR WITHDRAWAL

Withdrawal Type: Management of land and resource use and development of the proposed withdrawal area is under the jurisdiction of the Secretary of Agriculture.¹

Less than 5,000 acres, 43 U.S.C. §1714(d).

The United States Department of Agriculture, through the Forest Service, on December 29, 2006 proposed and applied for a 20 year withdrawal of land from entry under the Federal Mining Law of 1872 in order to reserve its mineral material resources for competitive sale and to maintain the land for recreational use.

Authority: The Federal Land Policy and Management Act of 1976, 43 U.S.C. §1714(d) and 43 CFR Part 2300.

Applicant/
Lead Agency: United States Department of Agriculture
Forest Service
Alaska Region
Chugach National Forest
Joe L. Meade, Forest Supervisor
3301 C Street, Suite 300
Anchorage, Alaska 99503-3998
(907) 743-9500

Project: Spencer Glacier Whistle-stop and Mineral Material Extraction Site

Legal Description: Seward Meridian, T. 7 N., R. 2 E., un-surveyed
Sec. 2, S½SE¼;
Sec. 11, N½, N½SW¼, SE¼SW¼, and N½SE¼;
Sec. 12, W½NW¼ and NW¼SW¼
720 acres

Publication: Federal Register: February 27, 2007; 72 FR 877

Public Participation: A Notice entitled “Proposed Withdrawal and Opportunity for Public Meeting” was published in the Anchorage Daily News on March 4, 2007. Letter notices were sent to the Alaska Congressional Delegation, to State of Alaska Departments and the Alaska Governor in February 2007.

¹ The proposed withdrawal area was added to the Chugach National Forest by Presidential Proclamation 852, February 23, 1909, of President Theodore Roosevelt under the authority of the Organic Administration Act of 1897.

The Federal Register Notice comment period expired on May 29, 2007. There was one comment from a former mineral material operator/placer miner challenging the need for a withdrawal and advocating the sale of tailings from placer mining operations. Comment treated as an environmental assessment alternative in the *Spencer Glacier Recreation and Mineral Material Withdrawal Application and Proposal Environmental Assessment's* proposed action but not pursued as it failed to allow for competitive sale of mineral materials.

Notice of a public meeting was published in the Anchorage Daily News on July 11, 2008. A public meeting regarding the withdrawal proposal was held in Girdwood, Alaska on July 16, 2008. No one appeared at the public meeting.

The above notwithstanding, the public was engaged in the environmental review process for recreational use and development of the proposed withdrawal area with the Forest Service's *Whistle Stop Environmental Impact Statement*, May 2006. The public is presently engaged in the environmental review process regarding mineral material sales from the proposed withdrawal area through the Forest Service's *Spencer Mineral Materials Project Environmental Impact Statement*. Public participation in the environmental review of the proposed withdrawal under the *Spencer Glacier Recreation and Mineral Material Withdrawal Application and Proposal Environmental Assessment* was encouraged through the public notice of the environmental assessment on the Bureau of Land Management's National Environmental Policy Act register on the World Wide Web at:
http://www.blm.gov/ak/st/en/info/nepa/afo_nepa/afo_nepa_fy2009.html
No comments were received.

Segregation Period:

Two years; expired: February 27, 2009.

Other Withdrawals:

600 acres immediately south of and adjacent to proposed withdrawal area; Public Land Order 7393, dated May 28, 1999, expires May 18, 2014; no overlap and no merger requested. These lands were withdrawn to reserve mineral materials for competitive mineral material sales.

Compensation for Improvements:

NA

Transfer of Jurisdiction: NA

Emergency: NA

National Defense: NA

Background

The Spencer Glacier (front cover) is located within the Chugach National Forest on Alaska's Kenai Peninsula. Mineral materials (common varieties of sand, stone, gravel, etc.) found on the outwash plain of the Glacier have been mined off and on for over a century and used for development throughout the State including harborage by the Army Corps of Engineers and rail belt development by the Alaska Railroad. The site offers the advantage of being well outside of the urbanized areas of the Kenai Peninsula; yet, the material can be readily brought to market by rail as the Alaska Railroad's rail line traverses the Glacier's outwash plain. After a century of extraction, the Forest Service estimates that there are 27.5 million tons of marketable aggregate and 20 million tons of marketable stone remaining on the Glacier's outwash plain. The Forest Service has planned for and is currently analyzing the environmental impacts associated with competitive sale of the material.

In 2006 the Forest Service entered into an arrangement with the Alaska Railroad to open up the Forest's backcountry with four formal train stops on its route through the Forest (Whistle Stop Project). In addition to passenger rail service, the Forest Service contemplates developing various recreational amenities at the Whistle Stops. One of the Whistle Stop/Recreation Areas is at Spencer Glacier. As of August 26, 2007 the Alaska Railroad and the Forest Service had invested 6.3 million dollars on the Whistle Stop system with a projected final cost estimate of 18 million dollars. As of this writing, the Forest Service has invested approximately \$775,000.00 in the Whistle Stop and other recreational amenities at Spencer Glacier alone. Forest Service improvements at Spencer Glacier include public restrooms, a kiosk, two small pavilions, a developed trail system, various camp sites and a boat launch. The public restrooms, kiosk and pavilions are within the proposed withdrawal area and amount to \$520,000 of the Forest Service's expenditures.

Ultimately the Forest Service anticipates reclaiming all past and future mineral material extraction sites at the Glacier in an effort to enhance the area's recreation potential. Further, with Congressional support, it anticipates offsetting the expense of the contemplated reclamation as well as that of recreational development throughout the Whistle Stop System with the proceeds from mineral material sales from the Glacier's outwash plain.

The common variety mineral materials (sand, gravel, rock) found in the Spencer Glacier area are not controlled by the Mining Law of 1872; these resources are considered federal property subject to sales disposal. However, Title 36 of the Code of Federal Regulations Section 228.41(b)(3) precludes the Forest Service from disposing of mineral material from mining claims where such disposal would materially interfere with prospecting, mining, or processing operations. The withdrawal is needed to preclude additional encumbrances from the location of new mining claims in the Spencer Glacier area.

The Forest Service anticipates that absent a withdrawal of the proposed withdrawal area from entry under the Federal Mining Law of 1872, entryman will locate claims upon the Glacier's outwash plain that will impede the Service's ability to enter into competitive mineral material sales as well as its ability to maintain and develop recreational infrastructure at the Glacier and throughout the Whistle Stop System within the Forest.

Proposed Action

Hence, the Forest Service has requested that the Secretary of Interior withdraw 720 acres of land at Spencer Glacier from entry under the Federal Mining Law of 1872 to allow the Forest Service to reserve the land's mineral material resource for competitive mineral material sale and to allow the Forest Service to maintain and develop the land for recreational use.

Documentation Incorporated by Reference

The following documents and the analyses contained therein are incorporated by reference as if fully set forth:

1. *Record of Decision and Final Environmental Impact Statement, Chugach National Forest, Land Management Plan Revision*, May 2002.²
2. *Upper Turnagain Landscape Assessment*, July 2004.³
3. *Record of Decision and Whistle Stop Final Environmental Impact Statement*, May 2006.⁴
4. *Spencer Mineral Materials Project Draft Environmental Impact Statement*; April 2008.⁵
5. *Spencer Integrated Weed Management Environmental Assessment*, January 2009.⁶
6. *Spencer Glacier Mineral Material and Recreation Withdrawal Proposal and Application Environmental Assessment*, March 2009.

The impacts associated with the proposed uses of the land: mineral material extraction followed by reclamation and further development of recreational infrastructure, as well as current recreational use are the subject of the Forest Service's *Record of Decision and Whistle Stop Final Environmental Impact Statement*, May 2006, and its *Spencer Mineral Materials Project Draft Environmental Impact Statement*; April 2008.

Although the *Spencer Mineral Materials Project Draft Environmental Impact Statement* is premised upon obtaining the withdrawal⁷ and although there is a logical connection between obtaining the withdrawal and mineral material sales and recreational development, the withdrawal is not necessary to either activity. Rather, the withdrawal will merely foreclose the potential for third party claims and enhance the Secretary of Agriculture's ability to manage land and resource use and development within the Chugach National Forest. Therefore, this finding is limited to the impacts associated with the administrative act of withdrawing the land from entry

² http://www.fs.fed.us/r10/chugach/forest_plan/plan_docs1.html

³ http://www.fs.fed.us/r10/ro/policy-reports/ep/eco_assess/upper_turnagain_la.pdf

⁴ http://www.fs.fed.us/r10/chugach/news_releases/whistle_stop/index_w-stop.html

⁵ <http://www.fs.fed.us/r10/chugach/deis/spencer/index.html>

⁶ http://www.fs.fed.us/r10/chugach/news_releases/spencer_weed-ea/spencer_iwm_ea_final.pdf

⁷ *Spencer Mineral Materials Project Draft Environmental Impact Statement*, pages 4 – 6; pages 38 – 39

under the Federal Mining Law of 1872.⁸ *A priori*, there are no natural or physical environmental issues or impacts associated with the administrative act of withdrawing the lands from entry under the Federal Mining Law of 1872.

Finally, time is of the essence as notice of the withdrawal request was published in the Federal Register on February 27, 2007, 72 FR 877, and the segregative effect of that publication expired on February 27, 2009, leaving a window of opportunity for entrymen under the Federal Mining Law of 1872. Meanwhile, the Forest Service is engaged in re-assessment of its Spencer Mineral Materials Project with likely publication of a final environmental impact statement pending. Since publication of the *Spencer Mineral Materials Project Draft Environmental Impact Statement* in April 2008, the Forest Service has become aware of the four placer mining claims that are wholly within the proposed withdrawal area which may affect the EIS' alternative configurations. While administrative processes are ongoing, segregation of the land from entry under the Federal Mining Law of 1872 has expired and the lands are presently open to entry.

Plan conformance and proposed uses

Withdrawal of lands from entry under the Federal Mining Law of 1872 was contemplated by and is in conformance with the Chugach National Forest *Revised Land and Resource Management Plan Environmental Impact Statement* (Plan) as provided at pages 3-497 and 498:

The Revised Forest Plan does not affect the quantity or quality of locatable minerals, but it will affect [through withdrawal] the number of acres where mineral exploration and development are allowed ... All withdrawals however, are subject to valid existing rights.

When a Record of Decision is issued for the selected alternative, the Forest Service may request that the BLM withdraw certain management areas from all forms of mineral entry [under the Federal Mining Law of 1872] ... Additionally, developed campgrounds or other facilities may be withdrawn.

⁸ See *Piedmont Heights Civic Club, Inc. et al. v. Moreland et al.*, 637 F. 2d 430 (5th Cir. 1981); *Great Basin Mine Watch v. Hankins*, 456 F. 3d 955 (9th Cir. 2006). A substantial portion of the analyses in the environmental assessment associated with this Finding of No Significant Impact are a consequence of the requirements of 43 CFR §2310.3-2.

Finding of No Significant Impact⁹

As there are no natural or physical impacts associated with the administrative act of withdrawing the lands from entry under the Federal Mining Law of 1872, as there is no irreversible and irretrievable commitment of resources associated with the administrative act of withdrawing the lands from entry under the Federal Mining Law of 1872, as the only effect associated with the administrative act of withdrawing the lands from entry under the Federal Mining Law of 1872 is a delay in the realization of the relative value of placer material, if any, that may be found on the lands, as time is of the essence, and as land and resource use and development within the Chugach National Forest are the province of the Secretary of Agriculture, I find that the administrative act of withdrawing the land from entry under the Federal Mining Law of 1872 will have no significant impact on the natural or physical environment or on the human environment, 40 CFR §1508.14 and §1508.27. I therefore recommend that the lands be withdrawn from entry under the Federal Mining Law of 1872.

/S/
Gary Reimer
Bureau of Land Management
Anchorage District Manager

5/8/2009
Date

⁹ The Forest Service has concurrently issued an independent Finding of No Significant Impact in association with the environmental assessment.